

EXHIBIT BH

SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

IN THE MATTER OF

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) Case No.

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BEFORE THE HONORABLE JENNIFER E. GREEN

TELEPHONIC EVIDENTIARY HEARING

(Transcribed from Audio Recording)

September 15, 2020
10:30 a.m.

PREPARED BY:
Debra Riggs Torres, RPR
Certified Reporter
Certificate No. 50647

PREPARED FOR:
Ms. DeeAn Gillespie Strub

(Certified Copy)



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1 those beautiful paintings behind you. So I'm glad we get
2 to see your face and your background.
3 All right. Dr. Schroeckenstein and
4 Dr. Korsten, I'm going to ask that you leave the meeting.
5 And then, Ms. Gillespie Strub, I'll let you
6 text or a quick email to let them know when they know they
7 need to pop back on. Because, like I said, we're going to
8 go very quickly here. It's 10:43.
9 So, Ms. -- Dr. Schroeckenstein and
10 Dr. Korsten, go ahead and please exit.
11 And, Ms. Gillespie Strub, as soon as they're
12 gone, whenever you're ready and your clock will begin.
13 MS. GILLESPIE STRUB: Thank you. And I did
14 just make arrangements. We will email
15 Dr. Schroeckenstein, and my client will text Dr. Korsten
16 at the appropriate time.
17 THE COURT: All right. It's 10:44. Go
18 ahead.
19 MS. GILLESPIE STRUB: Thank you.
20
21 **ELI NEWBERGER,**
22 a witness herein, having been first duly sworn to speak
23 the truth and nothing but the truth, was examined and
24 testified as follows:
25

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1 **DIRECT EXAMINATION**
2 BY MS. GILLESPIE STRUB:
3 Q. Dr. Newberger, could you please give the Court a
4 very brief history of your qualifications.
5 A. Sure. I founded and then served as the medical
6 director for 30 years the Child Protection Team, Child
7 Protection Research and Training program at Boston
8 Children's Hospital and Harvard Medical School, beginning
9 in September 1970.
10 With regard to the issues in this case, I
11 personally managed over 300 cases of what we used to call
12 Munchausen syndrome by proxy, what's now called factitious
13 disorder imposed by others in the Diagnostic and
14 Statistical Manual of the American Psychiatric
15 Association.
16 Most of my consultations have been of children
17 admitted to Boston Children's Hospital, where I closed my
18 office at the end of 1999, subsequent to which I've served
19 as an independent consultant.
20 I'm agnostic with regard to whether I testify
21 either on the plaintiff or on the defense side. But
22 before accepting any testimony on behalf of any attorney's
23 clients, I first assure myself by reviewing a sufficient
24 corpus of data that were the side on which I were
25 appointed to prevail, the greater interest of the

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1 **protection and care of children will be served. In other**
2 **words, I'm not a hired gun. And I explained this to**
3 **attorney Suzanne Nicholls of the Office of Child -- of the**
4 **State office of the -- of the child advocate, when she**
5 **first made contact with me about this case back in 2019.**
6 **At that time, she was representing Mr. Kahraman**
7 **and --**
8 MS. JOHNSON: Objection as to hearsay
9 regarding what Ms. Nicholls spoke to Mr. Newberger about.
10 THE COURT: Ms. Gillespie Strub?
11 MS. GILLESPIE STRUB: There's no
12 attorney-client privilege in that. He's an expert.
13 THE COURT: Well, that's the hearsay -- what
14 is the hearsay exception?
15 MS. GILLESPIE STRUB: Okay. Well, I guess
16 we can -- we'll just move on, then. Okay?
17 **THE WITNESS: Sure.**
18 **In any event, I was first consulted in this**
19 **matter, by the office of the child advocate, and I**
20 **reviewed, at that time, a large corpus of information and**
21 **concluded, unequivocally, that this was not a case of**
22 **Munchausen syndrome by proxy or factitious disorder**
23 **imposed by other but was rather a situation where the**
24 **parents were misled by unqualified professionals to**
25 **restrict their children's diets in support of a therapy**

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1 **purported to be favorable to their diagnosed autism.**
2 **This culminated in a severe nutritional**
3 **deficiency, which was then evaluated and treated by the**
4 **Phoenix Children's Hospital cardiologists, with a**
5 **favorable outcome.**
6 **I reviewed all of the evaluations that had**
7 **been performed at that time by the department and all of**
8 **the specialists' records at Phoenix Children's Hospital's**
9 **various clinics, including, particularly, the physical**
10 **therapy records by the PCH, Advanced Neurological**
11 **Rehabilitation, Dr. Nikki McCants, who noted the**
12 **improvement of the children after their nutritional**
13 **disturbances were addressed, and I further reviewed the**
14 **opinions of the department's experts, notably Dr. Kelly**
15 **[phonetic], the psychiatrist in California, whom they**
16 **relied on to make a diagnosis of factitious disorder by**
17 **proxy.**
18 **Dr. Kelly concluded that Ms. Kahraman's**
19 **behavior to their sons raised questions for mental**
20 **illness, and that regardless of the cause of**
21 **Ms. Kahraman's behavior, she is currently incapable of**
22 **providing safe and adequate care for her boys.**
23 **Unfortunately, there was no interview of**
24 **this woman that attached to making this diagnosis. And,**
25 **furthermore, in my own assessment, I've interviewed the**



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1 children's mother on several occasions, and nothing in my
2 interviews disclosed any inappropriate medicalization,
3 distortion, or falsehoods with regard to the medical
4 record. She was totally honest with me, in my opinion,
5 and there were no diversions from the medical record.
6 My opinion in this matter is that this
7 mother is the effective psychological parent for these
8 boys, and that it would be damaging to them to change
9 their children's custody from her.
10 There are no grounds, in my opinion, for
11 making either the Munchausen diagnosis or the factitious
12 disorder imposed by other diagnosis.
13 And I have to say that, with regard to the
14 expert who has been retained by the department, Dr. Kelly,
15 he not only violated the criteria in the Diagnostic and
16 Statistical Manual of the American Psychological
17 Association -- I'm just showing it to you because I have
18 it in front of me -- and also the guidelines of the
19 American Professional Society on the Abuse of Children, or
20 APSAC, which has detailed guidelines for practitioners and
21 stipulate that the rigorous pediatric review is a
22 criterion for making this diagnosis.
23 In my opinion, this is a pediatric -- not a
24 psychiatric -- diagnosis, and Dr. Kelly not only violated
25 the DSM guidelines but the APSAC guidelines in forming his

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1 adventurous and inappropriate conclusion and
2 recommendation.
3 THE COURT: Ms. Gillespie Strub, you're on
4 mute.
5 MS. GILLESPIE STRUB: I have no further
6 questions for Dr. Newberger --
7 THE COURT: Okay.
8 MS. GILLESPIE STRUB: -- in the interest of
9 time.
10 THE COURT: Thank you.
11 Do you all want to pivot now to cross and
12 then keep time that way, or do you want to keep going?
13 Ms. Johnson, what's your preferred? If you
14 want to cross now and use your time, or do you want to
15 save your time and do it all together?
16 MS. JOHNSON: We can cross now. Mr. Coordes
17 will handle cross of Dr. Newberger.
18 THE COURT: Okay. It's 10:51.
19 Go ahead, Mr. Coordes.
20 MR. COORDES: Yes. And plaintiff had said
21 about 7 or 8 minutes for the direct. So I'll be short,
22 Your Honor.
23
24 ///
25 ///

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1 CROSS - EXAMINATION
2 BY MR. COORDES:
3 Q. So, Dr. Newberger, can you hear me?
4 A. I can.
5 Q. Okay. Great.
6 So you testified that Dr. Kelly made a diagnosis
7 of factitious disorder imposed on others in his report.
8 Is that your testimony?
9 A. Yes.
10 Q. Okay. So if the report doesn't say that, you
11 would -- do you believe that that would be accurate?
12 A. Yes. I mean, the clear burden of his report was
13 that this was child abuse and that the mother couldn't be
14 treated, you know, in a sufficient way to protect these
15 boys.
16 Q. Okay. And then that -- also that Dr. Kelly
17 didn't do an interview of mother. Is that correct?
18 A. That was my understanding.
19 Q. And that was because mother did not make herself
20 available; is that correct?
21 A. I don't know that.
22 Q. Okay. So would that concern you, if she didn't
23 make herself available for that?
24 A. I'm sorry. What was the question?
25 Q. I'll move on.

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1 So if -- you testified that it's your opinion
2 that these parents were misled into giving an
3 overrestricted diet to the children; is that correct?
4 A. Yes.
5 Q. And --
6 A. They fell -- they fell in the hands of
7 unqualified practitioners who theorized inappropriately
8 and wrongly about dietary interventions. That caused the
9 symptoms that led to the cardiac problem that was treated
10 successfully at Phoenix Children's Hospital.
11 Q. And these children were completely dependent on
12 their parents for their diet; correct?
13 A. Yes.
14 Q. And so it was ultimately the parents who chose to
15 give the child -- the children restrictive diets; is that
16 correct?
17 A. Yes. They were wrongly advised, and they
18 followed inappropriate advice.
19 Q. And it's your opinion -- are you aware of the
20 actual -- the actual diet that they were given?
21 A. Yes.
22 Q. And it was very restricted; is that correct?
23 A. Yes.
24 Q. And it was -- do you need to be a doctor to
25 recognize that that was a very restrictive diet?



<p style="text-align: right;">Page 50</p> <p>1 It's my understanding as well that in April, 2 when she chose to try to record the visit, she did not 3 have visitation because she did not want to participate in 4 visitation unless she recorded the visitation. 5 So we've had several stops and starts in 6 that service since April that has -- that have caused 7 delays in her ability to work on that program with 8 Southwest Human Development. 9 THE COURT: Okay. Are you saying -- what's 10 the name of the model again? Can you spell it for me? 11 MS. JOHNSON: ACCEPTS. It's spelled 12 A-C-C-E-P-T-S. And you'll see it in the Southwest Human 13 Development monthly reports that have been marked and 14 admitted as DCS exhibits. And I can get you the number. 15 It is specifically to work through accepting 16 responsibility for your role in your child's neglect or 17 abuse. 18 And I know that mother's attorney has an 19 issue with the word "abuse." However, this Court is aware 20 that that's an umbrella term in this case, and we're 21 talking about medical neglect and abuse as a whole in this 22 case. 23 THE COURT: Okay. So is she working on 24 ACCEPTS or is she not working on ACCEPTS? 25 MS. JOHNSON: Now she is working on it</p>	<p style="text-align: right;">Page 52</p> <p>1 We still have a huge question as to how she 2 is going to interact and handle medical providers who do 3 not agree with her. Frankly, any time she does not agree 4 with the professional opinion provided by providers 5 throughout this case, she asked for their removal from the 6 case. And that's indicative -- the department believes 7 that's indicative of how she will behave in the future. 8 The department would ask this Court to look 9 at the email from Jennifer Young dated August 19th. She 10 is the child's therapist. And she acknowledges that she 11 is the child's therapist and has not met mother in person. 12 However, she has dealt with mother through several CFTs 13 over the phone and actually posits that it's very 14 concerning that still mother displays attention-seeking 15 behaviors. She evades direct questions and instead 16 expounds on all the things she's done for the boys. She 17 takes discussion away from the boys (indiscernible) 18 services and wants to focus on justifying her behaviors 19 and what she's done since this case has opened. 20 That is the child's therapist who is trying 21 to work with mother, and mother is continually trying to 22 control and manipulate the discussion. 23 The department has no doubt that mother is 24 bonded to these children. Has no doubt that mother does 25 well in visitation. In fact, I think the Court has heard</p>
<p style="text-align: right;">Page 51</p> <p>1 again. In July she agreed to work on it again with 2 Southwest Human Development. We have not received -- 3 THE COURT: Go ahead. 4 MS. JOHNSON: We have not received July or 5 August's monthly reports from Southwest Human Development. 6 Ms. Bell has been following up with Southwest Human 7 Development to get those. But we have not received them 8 yet, so we don't know exactly where she's at. But they 9 do -- they do feedback sessions and notes that have been 10 disclosed on an ongoing basis. 11 THE COURT: Well, it's already the middle of 12 September. I mean, shouldn't we have June and July's 13 reports? 14 MS. JOHNSON: We have June. We don't have 15 July and September. They emailed Ms. Bell at the end of 16 August, I believe -- and she can correct me -- saying that 17 they were going to be a little late with the July report. 18 They have not sent it as of yet. And now we are to the 19 point where we should be getting August's report. 20 Ms. Bell has followed up on both from 21 Southwest Human Development. But, ultimately, Your Honor, 22 it's the department's position, and I don't want to say 23 this lightly, but the visitation reports are a minor -- 24 are a minor factor in why the department doesn't believe 25 mother should have physical custody at this time.</p>	<p style="text-align: right;">Page 53</p> <p>1 the department say this on numerous occasions, that there 2 is no doubt that mother interacts well with her children 3 during these supervised visitations. The -- her parenting 4 ability on a day-to-day basis has never been in question. 5 It's always been how is she going to react when these 6 children have medical issues coming up and how is she 7 going to behave with these medical professionals. And 8 still, to this day, we do not have confidence or evidence 9 that she can behave appropriately and take guidance and 10 feedback from professionals without attempting to control 11 the narrative. 12 THE COURT: In one of my orders we talked 13 about a medical gatekeeper. Does the department think 14 that's a realistic way of moving forward in this case? 15 MS. JOHNSON: Your Honor, we did have that 16 court-ordered meeting, and it's the department's position, 17 and we are -- this is a very unique issue and a unique 18 procedural posture that we're in. The children are 19 already returned to father. The department believes, 20 based on father's eight months of demonstrated consistency 21 and stability with the professional providers, that father 22 can be that medical gatekeeper and that medical 23 decision-maker in this case. 24 The department -- it's the department's 25 position that that's father's role in this case.</p>



<p style="text-align: right;">Page 70</p> <p>1 Has any treatment provider recommended that 2 yet? 3 MS. GILLESPIE STRUB: Dr. Oakley. 4 THE COURT: Okay. Ms. Johnson, go ahead. 5 MS. JOHNSON: Thank you, Your Honor. 6 No professional who have seen mother with 7 the children have recommended that. Ms. Bell indicates 8 they were going to reassess the food restrictions at their 9 next staffing since mother started talking about the 10 ACCEPTS model again. 11 So that is on the table to discuss that 12 restriction and how that -- what that looks like moving 13 forward. 14 THE COURT: Okay. I think it's important 15 that I understand how far mother is on the ACCEPTS model 16 and how long she took a break from it. 17 Ms. Johnson, where in the exhibits would I 18 find that? 19 MS. JOHNSON: Yes, Your Honor. It is in the 20 visit notes from Southwest Human Development. I 21 apologize. I'm trying to pull up the exhibit worksheet. 22 THE COURT: That's okay. I've got 41. 23 MS. JOHNSON: Yeah. So I think they're 24 actually mislabeled on the worksheet. It should be 25 Exhibit 38, Exhibit 40, and Exhibit 41.</p>	<p style="text-align: right;">Page 72</p> <p>1 of May or end of April she reported that she was not 2 willing to discuss the ACCEPTS model, and she stated in 3 July that she was starting to accept -- to discuss it 4 again. And without the August report, I can't say how 5 much progress she's made since she agreed to restart 6 working through the ACCEPTS model again. 7 MS. GILLESPIE STRUB: It was a three out of 8 nine met. That's in the record. 9 THE COURT: Okay. Thank you, everyone, for 10 all of your thoughts. I appreciate your presentation in 11 the Kahraman matter. I'm talking it under advisement. 12 Actually, I'll take it under advisement on 13 the 28th, when I get those records, because I'll need time 14 to review them and all the records. 15 Thank you. This matter is adjourned. 16 MS. METELITS: Thank you. 17 (September 15, 2020, proceedings concluded) 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 71</p> <p>1 THE COURT: 38, 40, and 41. 2 MS. JOHNSON: And 49, Your Honor. 3 You'll see that there's a summary at the end 4 where they talk about each letter of the acronym 5 separately in the -- 6 THE COURT: Thank you. 7 Ms. Gillespie Strub, did you have something? 8 MS. GILLESPIE STRUB: Yes. In Exhibit 28, 9 Dr. Schroeckenstein also draws from the Southwest records 10 and addresses the ACCEPTS model in Exhibit 28, starting on 11 Bates number 267. 12 THE COURT: Thank you. 13 Okay. So very briefly, is she 50 percent 14 through ACCEPTS? Is she 25 percent through? How far is 15 she? 16 MS. GILLESPIE STRUB: It's our position 17 she's a hundred percent through, Judge. 18 THE COURT: Ms. Bell, are you able to 19 quantify it? It's my understanding that they work on the 20 entire model each time and how each factor may play into 21 different visits. 22 MS. BELL: Correct. So a lot of the aspects 23 of the steps overlap with each other. So sometimes they 24 hit on multiple different parts of it. I can't give you 25 how far she is right now because I believe it was the end</p>	<p style="text-align: right;">Page 73</p> <p>1 STATE OF ARIZONA)) ss. 2 COUNTY OF MARICOPA) 3 4 BE IT KNOWN that the foregoing audio/video recording was transcribed by me; that the 73 pages are a 5 full, true, and accurate record of the audio recording, all done to the best of my skill and ability. 6 I CERTIFY that I am in no way related to any of 7 the parties hereto, nor am I in any way interested in the outcome hereof. 8 [] Review and signature was requested. [] Review and signature was waived. [X] Review and signature not required. 9 I CERTIFY that I have complied with the ethical 10 obligations set forth in ACJA 7-206(F)(3) and ACJA 7-206 J(1)(g)(1) and (2). 11 Dated at Phoenix, Arizona, this 21st day of February, 2025. 12 13 14 15 16 /S/ Debra Riggs Torres DEBRA RIGGS TORRES, RPR Certified Reporter Arizona CR No. 50647 17 18 19 * * * * * 20 I CERTIFY that GRIFFIN GROUP INTERNATIONAL has 21 complied with the ethical obligations set forth in ACJA 7-206 (J)(1)(g)(1) through (6). 22 23 /S/ Griffin Group International GRIFFIN GROUP INTERNATIONAL Registered Reporting Firm Arizona RRF No. R1005 24 25</p>

